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May 29, 2014

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From: William T Fujioka  
Chief Executive Officer

### SACRAMENTO UPDATE - PUBLIC SAFETY STATE BUDGET PROPOSALS

#### Executive Summary

This memorandum contains an update on the three public safety State Budget proposals and corresponding trailer bill language of County interest related to:

- **Jail Construction Funding.** The Governor's Budget proposes \$500 million in additional funding to be allocated to counties for jail capacity expansion and improvement. Consistent with Board-approved policy, **the Sacramento advocates continue to support this proposal and have been advocating for an allocation methodology based on an assessment of counties' actual jail capacity needs and the relative impact of the AB 109 Program on counties.**
- **Long Term Sentences in County Jails.** The Governor's Budget proposes that individuals sentenced to at least 10 years under AB 109, and who have a non-suspended period of custody of nine years or longer remaining, would serve their sentence in State prison. Therefore, unless otherwise directed by the Board, consistent with Board-approved policy to support proposals that mitigate the impact on the County criminal justice system as a result of Penal Code 1170 (h), **the Sacramento advocates will support the Governor's Budget proposal.**
- **Presumption of Split Sentencing.** The Governor's Budget proposes changes to provisions of AB 109 that would presume a split sentence for everyone sentenced pursuant to these provisions. There is no Board-approved policy related to the issue of split sentencing; **therefore, an advocacy position on this proposal would be a matter of Board policy determination.**

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## **Public Safety State Budget Proposals**

As previously reported, the Governor's FY 2014-15 January Budget included a number of significant proposals related to public safety and the implementation of AB 109 (Chapter 15, Statutes of 2011). Those proposals - increased jail construction funding, long term sentences in county jails, and the presumption of split sentencing - were not significantly altered in the Governor's May Revision and continue to be considered as part of budget discussions between the Legislature and Administration.

This report provides an overview of the three proposals and corresponding trailer bill language.

**Jail Construction Funding.** The Governor's January Budget and May Revision propose \$500 million in additional funding to be allocated to counties for jail capacity expansion and improvement. This funding would supplement the \$1.7 billion the State has invested in jail construction over the last seven years through AB 900 of 2007 and SB 1022 of 2012. The trailer bill language specifies that the new funding be used by counties for adult local criminal justice facilities that may include improved housing with an emphasis on program and treatment space. The proposal outlines specific parameters for allocation of this funding including a 10-percent county match and a requirement that the funding criteria include documentation of the percentage of pretrial inmates in county jail from January 1, 2013 through December 31, 2013, and a description of the county's current risk assessment-based pretrial release program.

The Sacramento advocates have supported the Governor's proposal to allocate an additional \$500 million for jail construction funding but have been urging the Administration and the Legislature to base the allocation methodology for any such funding, not on a competitive grant basis with requirements for pretrial data, but on an assessment of counties' actual jail capacity needs and the relative impact of the AB 109 Program on counties. **The Sacramento advocates will continue to support this proposal and will continue to advocate that the allocation methodology reflect the above considerations.**

On May 8, 2014, the Senate Budget Subcommittee No. 5 on Corrections, Public Safety and the Judiciary considered the \$500 million jail construction funding proposal and passed placeholder trailer bill language to include the funding in the final FY 2014-15 State Budget to be allocated to counties for jail expansion with a focus on program space and treatment and reentry beds. On May 22, 2014, the Assembly Budget Subcommittee No. 5 on Public Safety approved \$500 million in funding with the requirement that construction projects address long-term inmate issues such as treatment, education and healthcare.

**Long Term Sentences in County Jails.** As a result of the changes to sentencing laws implemented by the AB 109 Program under Penal Code (P.C.) 1170(h) that requires certain individuals convicted of a non-violent, non-serious and non-sex felony offense to serve their sentences in county jails instead of State prison, a number of offenders who would have previously gone to State prison on lengthy sentences remain in county jails. In his January Budget, the Governor acknowledged that county jails are not appropriate for housing inmates for lengthy terms and indicated that trailer bill language would be developed to address this issue.

On May 14, 2014, trailer bill language was introduced which outlines the Brown Administration proposal to mitigate the impact of inmates sentenced to long terms in county jail. The proposal stipulates that for individuals sentenced to at least 10 years for a P.C. 1170(h) offense and who have a non-suspended period of custody of nine years or longer remaining, they would serve their sentence in State prison. For those sentences of 10 years or more that would be served in State prison, the court would be required to suspend at least one year but not more than one-third of the concluding portion of the term to be served in the community under mandatory supervision.

Under this proposal, for any inmate that is currently in a county jail serving a sentence of at least 10 years under P.C. 1170(h) that has a period of custody of nine years or more remaining, the county would be able to contract with the State to house that individual for \$1 per year. All other individuals sentenced after enactment of this legislation and housed in State prison would be paid for by the State.

According to the Sheriff's Department, Los Angeles County jails now house approximately 52 inmates with sentences over 10 years, with one individual serving a 42-year sentence. Housing individuals with sentences of these lengths poses a significant challenge for the Department. Jail beds that are occupied for many years by one individual reduce the flexibility the Department has in matching risk and security level with appropriate jail housing. In addition, the resources needed to provide medical and mental health care, including treatment for chronic and serious illness, to someone housed in the County jail for 10 years or more are significant. The Governor's proposal would help mitigate the impact that long term county jail sentences have on County jail operations.

The Sheriff's Department and this office support the Governor's proposal to house inmates with long term county jail sentences in State prison. The Los Angeles County District Attorney is also in support of this proposal. Therefore, unless otherwise directed by the Board, consistent with Board-approved policy to support proposals that mitigate the impact on the County criminal justice system as a result of Penal Code 1170(h), **the Sacramento advocates will support this budget proposal.**

Neither the Senate nor Assembly Budget Subcommittees have considered this proposal, but it could still be considered during budget negotiations over the coming weeks.

**Presumption of Split Sentencing.** In addition to the statutory changes to sentencing law outlined above, AB 109 allowed for P.C. 1170 (h) county jail sentences to be straight custody time or to be split, which would include a period of custody time followed by a period of mandatory supervision by a county probation department. In the January Proposed Budget and May Revision, the Governor indicated that he would propose changes to the split sentencing provisions and has subsequently released trailer bill language detailing his proposal.

As outlined in the trailer bill, all sentences imposed under P.C. 1170(h) would be presumed to be split. Specifically, unless the court finds that in the interests of justice and due to the particular circumstances of an individual case a split sentence is not appropriate, the concluding portion of the sentence would be suspended as follows:

- For sentences of less than three years, the split would be determined at the court's discretion;
- For sentences of at least three years but not more than eight years, at least one year of the sentence would be served under mandatory supervision in the community; and
- For sentences longer than eight years, the split would be not more than one-third of the total sentence.

As proposed, these new sentencing provisions would be applied prospectively for any individual sentenced on or after January 1, 2015.

Since the implementation of AB 109 in October 2011, over 1000 individuals have received a split sentence in Los Angeles County. This represents approximately five percent of all sentences imposed under the provisions of AB 109. There are currently 180 individuals being supervised under mandatory supervision by the Probation Department.

The Los Angeles County District Attorney supports the use of split sentences in appropriate cases and believes that they can provide a valuable supervision tool to aid law enforcement. The Sheriff's and Probation Departments concur and support the

Each Supervisor  
May 29, 2014  
Page 5

Governor's proposal to include a presumption of split sentencing and a period of mandatory supervision for offenders upon release from custody to ensure public safety and improve offender outcomes.

**There is no Board-approved policy related to the issue of split sentencing; therefore an advocacy position on this proposal would be a matter of Board policy determination.**

The Assembly Budget Subcommittee No. 5 on Public Safety approved placeholder trailer bill language on the presumption of split sentences on May 22, 2014. The Senate Budget Subcommittee did not consider this proposal. Therefore, this item will be considered by the Budget Conference Committee.

We will continue to keep you advised.

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MR:KA:ma

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